

Reissue Applicant	: Steven Dunn et al.	Art Unit	: 3749
Application No.	: 09/902,965	Examiner	: Pamela Anne Wilson
Filed	: July 11, 2001	Status	: First office action mailed
Original Patent	: 6,125,548		January 11, 2002 rejecting all
Issued	: March 21, 2000		claims
Title	: BOTTLE RACK		

#3

Commissioner for Patents
Washington, D.C. 20231

PROTEST UNDER 37 CFR 1.291(a)

The First Years Inc., a Delaware corporation, having a place of business at 2622
Dimension, Suite 230, Lake Forest, California 92630, protests the reissue application above
identified. Although the application file indicates publication of notice of the reissue application
in the Official Gazette on September 18, 2001, it does not appear that such notice was in fact
then published. Attached as Exhibit A are copies of the Official Gazette pages containing reissue
notices which were published on September 18, 2001, which omit reference to the subject
application. Thus, this protest is believed to be timely filed.

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Prior Art Relied Upon

The prior art relied upon comprises patents already before the Examiner as well as
publications cited to the Examiner in the file of the original application for Patent 6,038,784
(784 patent). The patents and publications relied upon are set forth below and in the
accompanying Information Disclosure Statement, Form 1449, attached as Exhibit B. Copies
thereof, including translations of the included Swiss and French patents, are attached as
Exhibits C-O. They are, as follows:

- C: Great Britain Patent 160,098
- D: A.J. Son Patent 2,472,027
- E: Jerry N. Kassanchuk Patent 4,238,035
- F: Kil J. Chang Patent 5,492,237
- G: Swiss Patent CH 685919 A5
- H: Benjamin Bronstein Patent 3,730,354
- I: André Lafleur Patent 5,287,636
- J: Safety 1st product literature
- K: Mommy's Helper product literature
- L: T.J. Hopkins Patent 2,441,417
- M: L. Poglein Patent 2,039,927

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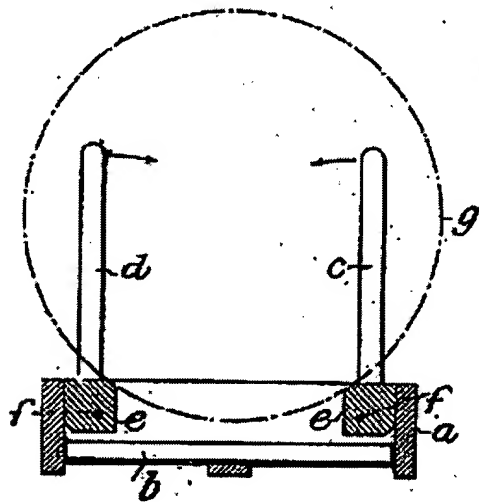
N: Goldstein Patent 499,881
 O: J.E. Fox Patent 2,879,900

Concise Explanation of Relevance of Prior Art

In the Office Action of January 1, 2002, the Examiner rejected application claims 1-4 as anticipated by British Patent 160,098 (British '098). Claims 6-8 and 12 were rejected as claiming matter not adequately supported and defined in the specification. Claims 5, 9-11 and 13 were indicated to be allowable if rewritten to overcome rejection(s) under 35 U.S.C. §112, second paragraph.

First it is submitted that all of claims 1-4 are unpatentable as anticipated by both the British '098 patent, Exhibit C, and Son U.S. Patent 2,472,028 (Son '028), Exhibit D.

Fig. 3 of the British '098 patent is reproduced below.



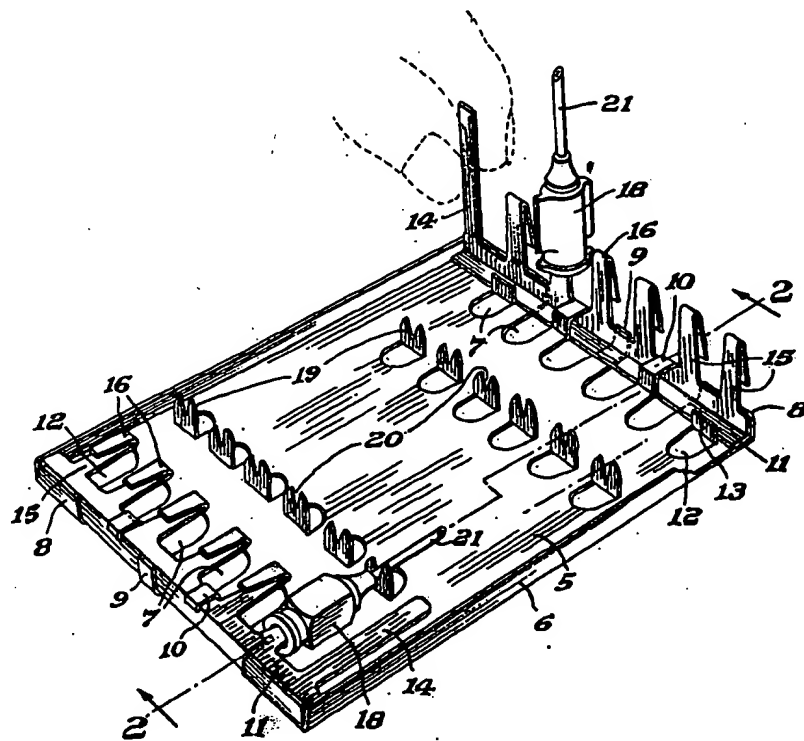
In rejecting application claims 1, 3 and 8, the Examiner described the anticipatory British '098 patent, as follows (Office Action, p. 6):

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by The British Patent No. 160,098. The British Patent No. 160,098 (British Patent '098) discloses an apparatus for storing an article which includes a tray having a bottom face that is adapted to be supported by an underlying surface, an upper face, a plurality of pegs extending outwardly from the

upper face. These pegs are permanently mounted to the tray and are capable of being positioned adjacent to the upper surface of the tray for the purpose of storage of the apparatus; and further, the pegs are also capable of being positioned so as to extend outwardly from the upper surface so as to enable the support of an article on the upper surface of the apparatus. The British Pat. '098 further includes a collection reservoir for collecting any liquid which might run out or off of the articles while being supported on the upper surface of the tray.

That description is essentially applicable, as well, to the Son '028 patent. Son, in addition, supports objects directly on the "fingers," as he describes them, which correspond to the "pegs" of the pending application.

Fig. 1 of the Son patent is reproduced below.



The Son '028 patent, which was not cited in the examination of the original application for the '784 patent, discloses a tray having permanently mounted at each end a hinged member 11 with a plurality of pegs (fingers 15) extending therefrom to support hypodermic syringes and

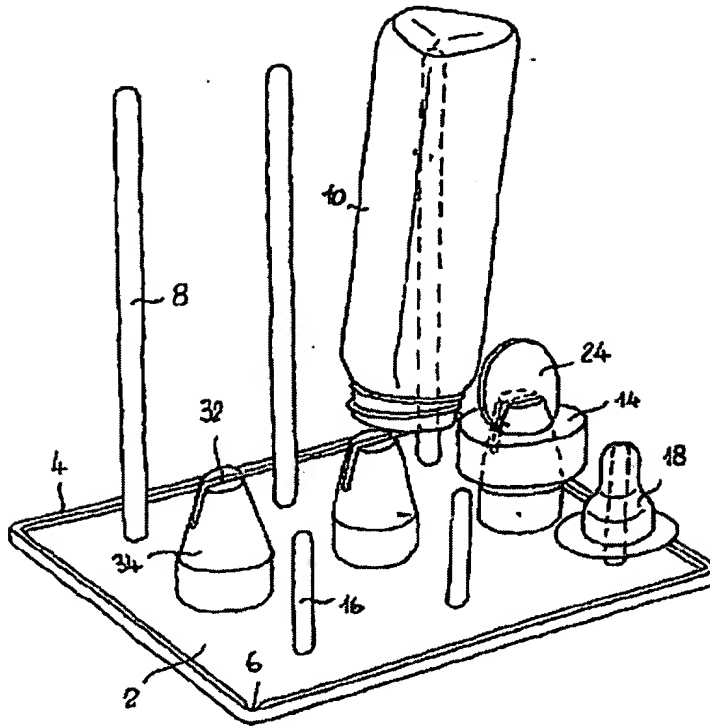
needles. Tabs 8, 9 and 10 on the tray engage the member 11 to hold the pegs in either of two positions, as stated in the Son patent at Col. 1, lines 3-7:

...so that they [the hypodermic syringes and needles] may either be disposed flat for convenience in packaging or carrying them or disposed in an upright position when they are to be sterilized or one of them is to be removed for use.

The Son '028 patent discloses every element of claims 1-4 of the pending application. Claim 1 calls for a tray to be supported on a surface, a plurality of pegs, each peg sized and arranged to support an article, and each peg permanently mounted to the tray for movement from a storage position adjacent the tray to an extended position. According to the claim, the movement of the pegs enables the apparatus to be folded for packaging and storage. Each of these elements, as well as the specific function, is shown and described in combination in the Son '028 patent. Thus, the Son '028 patent, as well as British '098 patent, anticipates claim 1.

Unlike claims 1-4 which, as discussed above, are directly anticipated by the British '098 patent and the Son '028 patent, claim 5 and subsequent claims are limited to apparatus for baby bottles or accessories and in certain claims positively recite structure specifically useful in drying the baby bottles and components thereof. Since the British '098 and the Son '028 patents do not relate to baby bottles and components, per se, it is necessary to consider whether the claimed subject matter would have been obvious to one of ordinary skill in the art at the time the invention was made.

Referring to the art cited by the Examiner during prosecution of the original application for the '548 patent, drying racks with fixed, non-folding supporting pegs were shown in Kassanchuk, U.S. Pat. 4,238, 035 (Exhibit E). The pegs of the '035 patent included pegs to support baby bottles. A folding bottle drying rack was also shown in the cited Chang U.S. Pat. 5,492,237 (Exhibit F) which also had pegs for supporting baby bottles. In Chang the drying rack collapsed and folded about vertical axes for compact storage. In addition, Swiss Patent 682,919, Exhibit G, which was not cited by the examiner in the original application, discloses a tray having fixed pegs 8 for supporting baby bottles. Fig. 2 of the Swiss '919 patent is reproduced below.



In addition to the foregoing patents, the prior art includes a non-folding Bottle and Nipple Drying Rack sold by Safety 1st. This product is illustrated in packaging, Exhibit J, bearing a 1996 copyright. The applicant submitted Safety 1st's packaging for the Examiner's consideration during examination of the application for the '548 patent. Another prior art publication showing a bottle drying rack, Mommy's Helper -Drain 'N Dry Bottle Drying Rack, Exhibit K, was also submitted by the applicant. These items of art were cited in the '548 patent. The applicant did not cite these publications in the pending application for reissue of the '548 patent.

Drying racks for other products are also shown in the prior art. The British '098 and the Son '028 patents, Exhibits C and D, which have folding pegs, have already been discussed. Bronstein U.S. Pat. 3,730,354, Exhibit H, and Le Fleur et al. US Pat. 5,287,636, Exhibit I, both disclose boot drying racks which are foldable for storage.

Turning then to the claimed subject matter in relation to the prior art, as noted previously, the British '098 and the Son '028 patents anticipate claims 1-4 but do not disclose use for drying baby bottles and accessories. The British '098 and the Son '028 patents and the other non-bottle drying collapsible racks nevertheless remain pertinent as analogous prior art since collapsing racks for storage addresses the same problem in both the prior art and the '548 patent as is set forth in the claims, e.g., mounting "pegs for arcuate common arcuate movement between a first

storage position... for storage and packaging... and a second, operative position... extend[ing] outwardly....". As stated in In re Clay, 966F.2d 656, 658-9 (Fed. Cir. 1992):

Two criteria have evolved for determining whether prior art is analogous (1) whether the art is from the same field of endeavor, ... and (2) if ... not..., whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved.

The Safety 1st and Mommy's Helper prior art, Exhibits J and K, described in the introductory portion of the '548 patent establish that it was known to provide a tray with pegs to support bottles. The Chang '237 patent and the Swiss '919 patent, Exhibits F and G, have the same disclosure. The Kassanchuk patent, Exhibit E, made similar provisions in a wire rod structure not having its own tray.

All that was missing from these devices was the ability to collapse them for storage. Yet this feature in a bottle drying rack was known from the Chang '237 patent, Exhibit F. The British and Son patents simply collapse their structures about horizontal axes rather than the vertical axes about which Chang's structure folds. The suggestion of folding racks existing in the art, the skill of the art and the motivation in adapting fixed structures to collapsing structures is demonstrated in Chang and its reference to earlier art. That the British and Son patents are applicable prior art to the claims specific to baby bottle and accessory drying is manifest from the Supreme Court decision in Graham v. John Deere Co., 383 U.S.1 (1965) in which it was argued that certain prior art was not pertinent to claims involving a pump sprayer for insecticides. The Supreme Court stated (p. 35):

Cook Chemical argues... that Livingston is not pertinent prior art because it relates to liquid containers having pouring spouts rather than pump sprayers... The problems confronting Scoggins [the inventor]... were not insecticide problems; they were mechanical closure problems.

So here, the problems confronting the patentee were not baby bottle and accessory drying problems. They were support folding problems to facilitate packaging and storage, exactly the function of the British and Son patents.

We turn then to the remaining claims of the reissue application.

Claim 5 is independent and is similar to claim 4, including parent claims 2 and 3. Claim 5, however, identifies its function as supporting baby bottles and defines structure comprising a tray having sidewalls and an axle for mounting a plurality of pegs, the axle being in journal holes in the sidewalls and the joined holes being elevated above the tray so as not to receive water during use of the drying apparatus.

The Swiss '919 patent, Exhibit G, discloses a tray having pegs for supporting baby bottles and the tray of the Swiss '919 patent has sidewalls extending above the tray surface. The Safety 1st and Mommy's Helper publications, Exhibits J and K*, also disclose the same elements. The British '098 patent, Exhibit C, discloses a drying rack having pegs mounted to axles for common arcuate movement between flat storage and erect operative positions; the drying rack has sides which have opposed holes elevated above the tray bottom, where they would not receive water, which holes receive pivot pins (f) to which the axles are mounted. The Son '028 patent, Exhibit D, also discloses pegs mounted to axles for common arcuate movement between flat storage and erect operative positions; the Son patent mounts its axles between the sides of the tray without the use of openings in the sides but notes (Col. 2, lines 26-28):

[A]ny type of hinge means may be used to connect the members [the axles] to the base [the tray] 5...

Thus, Son teaches the use of any conventional means of mounting the axles. Using journals and the like to mount pivoting or rotating members is well known in the art. See, in this connection, Hopkins U.S. Patent 2,441,417, Exhibit L, which journals axles having pegs for supporting milk bottles; Poglein U.S. Patent 2,039,927, Exhibit M, which journals the ends of axles supporting pivoting brackets in the sides of a rack. See also the Chang '237 patent, Exhibit F, which journals the vertical elements of a baby bottle and accessory drying rack in base elements of the

* A better copy of the Mommy's Helper reference, Exhibit K, is believed to be present in the file wrapper of the original application, Ser. No. 09/513,094, for U.S. Patent 6,125,548 to which this reissue application is directed.

rack; see especially Figs. 6-8. As noted, the pivots of the British '098 patent are positioned where they would not receive water, and journalled pivots in tray sides would inherently be so positioned.

It is submitted that claim 5 is unpatentable over any of the Swiss '919 patent or the Safety 1st or Mommy's Helper publications, which disclose the basic structure, in view of either of the British '098 or Son '028 patents, which disclose pegs on axles, and further, if needed, in view of any of the Hopkins '417, Poglein '927 or Chang '237 patents, which disclose journaled axle pivots.

We turn then to the claims dependent, directly or indirectly, on claim 5.

Claims 6-12 can be considered together. Claim 6 adds to claim 5 frictional means connected to the axle for frictionally engaging the tray when pegs are moved from the storage to the operative position. Claim 7 adds to claim 6 the requirement that the frictional means is a cam member connected to the axle. Claim 8 adds to claim 5 that the frictional means (for which there is no antecedent in claim 5) bears on a horizontal portion of the tray. Claim 9 adds to claim 5 location means connected to the axle for locking the pegs in their operative position. Claim 10 adds to claim 9 that the location means comprises a cam member with a first surface that contacts a cam stop defined in the tray surface. Claim 11 adds to claim 10 that the cam stop is elevated above the tray surface. Finally, claim 12 adds to claim 10 that the frictional means comprises a second surface bearing on the upper surface of the tray.

It is perhaps easiest to start with claim 9 and its "location means" since as will be seen the "location means" also includes the detailed features of claims 6-8 and 10-12. Since claim 9 is a "means" claim we need to refer to the specification of the application to determine its proper construction. The specification, Column 4, lines 16-28 (par. 2), refers to the "location means" as a "locating structure," as follows:

As may be seen in Fig. 4, locating structure 26 includes a cam member 43 having a lower surface 44 that is constructed and arranged to bear against the upper face 16 of tray 12 and a forward surface 46 that is constructed and arranged to come into contact with a rear surface 44 of a cam stop 42 that projects upwardly and is unitary with the upper face 16 of tray 12.

Fig. 1 and Fig. 4 both depict the locking structure 26 in the second,

operative position. The path between the first and second positions is indicated in Fig. 4 by arrow 46. The nipple support member 32 is prevented from bending backwardly in the direction away from the first storage position by contact of the forward surface 46 of cam member 43 with the rear surface 44 of cam stop 42.

As thus explained, the "location means" of claim 9 includes the detailed features of claims 6-8 and 10-12. Indeed, claims 10-12 are redundant since they simply claim features already included in claim 9.


In any event, the Son '028 patent discloses the identical location means of claim 9 as well as the detailed features of claims 6-8 and 10-12. Son has a cam member with frictional means comprising a lower surface, i.e., the bottom of the angled member 11 that extends at a right angle to the wall from which the pegs 16 extend, which is constructed to bear against the upper face of tray base 5. Member 11 also has a forward surface, the side of angled member 11, which extends vertically when pegs 16 are erect, which comes into contact with a rear surface of a cam stop, i.e., vertical tray end wall 9, that projects upwardly above and is unitary with the tray. The pegs are prevented from bending backwardly in a direction away from a storage position by contact of the forward surface of the cam member and the rear surface of the cam stop (end wall 9). Accordingly, every element of claims 6-12 is identically disclosed by the Son '098 patent and claims 6-12 are unpatentable over the same art applied above to claim 5.

Claim 13 is independent. Like claim 5 it requires a tray and pegs for supporting a baby bottle. Unlike claim 5 it omits the requirements of sidewalls on the tray and of opposed holes in the sidewalls in which an axle is mounted for rotation. Claim 13 goes on, however, to require at least two axles and that the rotational direction of motion of pegs on the axles be substantially the same. Except for the rotation of the pegs in the same direction, as discussed above, the features of claim 13 are known from the Swiss '919 patent and either the British '098 or the Son '028 patents. Pivoting pegs or other members in the same direction, however, is a matter of choice and is known from the Hopkins '417 and Poglein '927 patents, Exhibits L and M, and from Goldstein U.S. Patent 499,881, Exhibit N. Thus, claim 13 is unpatentable over the Swiss '919 patent in view of either the British '098 or the Son '028 patents and, further, in view of the Hopkins '417, Poglein '927 or Goldstein '881 patents.

Finally, we note that claims 14, depending from claim 13, and 15, depending from claim 14, are directed to a cutout on the side of the tray to facilitate lifting the tray. Openings on the side of apparatus for lifting are known. See the cutout in the cover of the apparatus in the Swiss '919 patent. See also the open sides of the bottle drying rack of Fox U.S. Patent 2,879,900, Exhibit O. It is submitted that these claims claim subject matter obvious in light of the art.

In summary, the prior art anticipates or renders obvious each and every claim of the reissue application. Rejection of all of the claims is urged.

Respectfully submitted,



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PROOF OF SERVICE

The above Protest under 37 CFR 1.291(a) and the accompanying exhibits were served by first class mail, the 2nd day of April, 2002, upon the attorney for the applicants, addressed as follows:

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